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**FOCAL COMMUNICATIONS CORPORATION  
OF ILLINOIS**

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**Petition for Arbitration Pursuant to  
Section 252(b) of the Telecommunications  
Act of 1996 to Establish an Interconnection  
Agreement with Illinois Bell Telephone  
Company d/b/a Ameritech Illinois**

**Docket 00-0027**

**AMERITECH ILLINOIS' POST-HEARING BRIEF  
ON ISSUES 1, 3, 4 AND 7**

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## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION . . . . .	1
SUMMARY OF POSITIONS . . . . .	1
ARGUMENT . . . . .	3
ISSUE 1:    RECIPROCAL COMPENSATION RATE . . . . .	3
ISSUE 3:    CONVERSION OF SPECIAL ACCESS SERVICES TO LOOP/TRANSPORT UNE COMBINATIONS . . . . .	8
A.    Requisites for Converting Special Access Services to Loop/Transport UNE Combinations . . . . .	9
1.    Ameritech Illinois' Definition of a "Significant Amount of Local Exchange Service" Is Supported by Federal Law and Has Been Agreed to by Focal . . . . .	9
2.    Service Provided to ISPs is Not Local Exchange Service for Purposes of Focal's Self-Certifications . . . . .	10
3.    Focal Must Pay All Applicable Termination Charges When Converting a Special Access Service to a Loop/Transport UNE Combination . . . . .	12
4.    Focal Must Pay Any Applicable Service Ordering Charges When Converting a Special Access Service to a Loop/Transport UNE Combination . . . . .	13
B.    Rule 315(b) Does Not Require Ameritech Illinois to Affirmatively Combine UNEs for Focal . . . . .	14
ISSUE 4:    POINTS OF INTERCONNECTION FOR FOREIGN EXCHANGE SERVICE . . . . .	19
ISSUE 7:    MODIFICATIONS TO COMPONENTS OF xDSL LOOPS . . .	27
CONCLUSION . . . . .	30

## **INTRODUCTION**

Illinois Bell Telephone Company d/b/a Ameritech Illinois (“Ameritech Illinois”), respectfully submits its post-hearing brief on Issues 1, 3, 4, and 7.<sup>1</sup>

Focal Communications Corporation of Illinois (“Focal”) submitted its Petition for Arbitration in this matter on January 12, 2000 (“Petition”), setting forth 14 numbered issues for arbitration.

Ameritech Illinois filed its Response to the Petition on February 7, 2000 (“Response”), along with a proposed interconnection agreement. By that day, as Ameritech Illinois reported in the Response, the parties had resolved Issues 5, 6, 9, 10, 11, 12, and 13.

Issue 8 was stricken by Hearing Examiners’ Ruling dated February 24, 2000.

The arbitration hearing was held on March 15 and 16, 2000. By the conclusion of the hearing, the parties had resolved Issue 14, leaving only issues 1, 2, 3, 4, and 7 to be resolved by the Commission. Ameritech Illinois has submitted a separate post-hearing brief on Issue 2, concerning inter-carrier compensation on ISP traffic. In this brief, we address the remaining issues in arbitration.

## **SUMMARY OF POSITIONS**

Ameritech Illinois’ positions on Issues 1, 3, 4 and 7 may be summarized as follows:

### **Issue 1: Rate for Reciprocal Compensation.**

Focal should not receive the reciprocal compensation rate for either the tandem or transport elements of termination unless the following conditions are satisfied: (i) Focal proves that its switch currently serves a geographic area comparable to that served by Ameritech Illinois’ tandem switch and (ii) Focal proves that its switch performs the same

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<sup>1</sup> Ameritech Illinois has separately submitted its post-hearing brief on Issue 2.

functions on behalf of Ameritech Illinois as Ameritech Illinois' tandem performs. To satisfy the second of those two conditions, Focal must show that (a) it gives Ameritech Illinois the option to connect directly to Focal's end office function and thus to avoid payment of the tandem rate (and perhaps also the transport rate) if it so chooses, and (b) it defines its switch and offers interconnection on a nondiscriminatory basis for both the termination of local traffic by other LECs and the termination of toll traffic by long distance interexchange carriers. The record shows that Focal has not met these requirements.

**Issue 3:        Conversion of Special Access Service to UNEs.**

Ameritech Illinois will provide pre-existing combinations of local loop and dedicated transport network elements at TELRIC-based rates and on non-discriminatory and reasonable terms and conditions, consistent with the requirements of the UNE Remand Order and Supplemental Order. However, Ameritech Illinois' duty to provide pre-existing loop/transport combinations is subject to several qualifications under federal law, and those qualifications should be reflected in the interconnection agreement. Focal has not and **cannot** refute that federal law imposes these requirements, and in fact has agreed to some of them before the FCC. Further, Focal's argument that Ameritech Illinois must affirmatively combine UNEs at Focal's request is both waived and baseless as a matter of law.

**Issue 4:        Points of Interconnection for Foreign Exchange Service.**

The issue here is whether Focal can force Ameritech Illinois to transport traffic for Focal to a location that is outside the local calling area of the originating caller, i.e., more than 15 miles from the rating point assigned to ~~the~~ NXX of the originating caller, without any compensation for that transport. If Focal could force Ameritech Illinois to do so,

Ameritech Illinois would effectively be required to subsidize Focal's competing foreign exchange service. As the record shows, Ameritech Illinois' proposed contract language prevents such uneconomic and anticompetitive distortion while in no way impeding Focal's ability to offer foreign exchange service, use its assigned NXX codes, or compete on a level playing field with Ameritech Illinois.

Issue 7: Modifving Components of xDSL Loops.

Ameritech Illinois maintains ownership of the network elements it leases to Focal, and is responsible for maintaining them. Focal does not have a right to veto or demand prior notice changes to network elements, and giving Focal such authority would prevent Ameritech Illinois from properly managing and maintaining its network.

ARGUMENT

ISSUE 1: RECIPROCAL COMPENSATION RATE.

Focal's statement of the issue to be arbitrated: Focal and Ameritech were unable to agree upon the rate to be paid for reciprocal compensation. [Section 4.7 of ~~the~~ Interconnection Agreement]

Focal asks ~~the~~ Commission to permit it to charge Ameritech Illinois the end office, tandem and transport elements of termination for every local call that originates on Ameritech Illinois' network and that Focal terminates.' Focal maintains it should be permitted to charge that composite rate (sometimes referred to as ~~the~~ "tandem rate") because, Focal claims, each of its switches in Illinois (i) serve a geographic area comparable to the

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<sup>2</sup> Issue 1 pertains only to ~~the~~ transport and termination of local traffic, not ~~the~~ delivery of Internet traffic to Internet service providers who are customers of Focal or Ameritech Illinois. Inter-carrier compensation for ISP traffic is the subject of Issue 2, which Ameritech Illinois addresses in a separate brief.

area served by an Ameritech Illinois' tandem switch, and (ii) perform functions similar to Ameritech Illinois' tandem. The Commission should deny Focal's request, because Focal will be over-compensated (and Ameritech Illinois will over-pay) if Ameritech Illinois is required to pay the composite tandem rate for all local traffic that originates on Ameritech Illinois' network and terminates on Focal's network.

When Focal requested NXX codes for its Chicago switch, it completed an application (Barnicle Cross Ex. 1) that required it to identify all functionalities that that switch performed. Focal indicated that its switch performed only end office functionalities. In addition to specifically identifying "end office functionality," Focal also indicated ~~other~~ end office functionalities that its switch performed, including "ISDN office," "Switch 56 kilobit data services," and "Common Channel Signaling." (Tr. 65-67). Focal did not, on the other hand, indicate that its switch performed *any* tandem functionality. The application offered Focal the opportunity to call out, for example, "Feature Group D tandem," "directory assistance tandem," "Feature Group C tandem," and "Cellular Tandem" as functions that its switch performed, but Focal indicated its switch performed none of those functions. (Id.) Thus, at a time when Focal had no particular ax to grind, it declared that its switch was performing end office switching and not tandem switching.

There is no evidence in the record that suggests that the functionality of Focal's Chicago switch has changed since Focal represented that it performed only end office switching, or that ~~the~~ functions of Focal's Arlington Heights switch differ from the functions of its Chicago switch. Accordingly, the Commission should take at face value what plainly

appears on the face of Barnicle Cross Ex. 1, and require Focal to charge only the end office switching rate when it terminates local traffic.

At hearing, Focal tried to explain away the NXX application document by saying that it used the document only to provide routing information for use by interexchange carriers. That explanation does not wash. In the **first** place, nothing on the face of the exhibit suggests that Focal was supposed to use it for that limited purpose. Quite the contrary, the application asked Focal to state the “Type of service for which the code is being requested,” and Focal answered “Local Exchange,” not exchange access. (**Barnicle** Cross Ex. 1 at item 1.4(a)). **Furthermore**, on the page immediately before the page on which it indicated that its switch functioned as an end **office** switch rather than a tandem, Focal was asked if the switch was for “Inter LATA use,” and it gave the answer “N” rather **than** “Y.”

In the second place, there is no suggestion in the record that Focal’s switches function differently when they route access traffic handed off by **IXCs** **than** when they route local traffic handed off by Ameritech Illinois. Indeed, **the** very reason that Ameritech Illinois has asked for language in the reciprocal compensation provision of the parties’ agreement (proposed § 4.7. I) is to ensure that Focal treats Ameritech Illinois no differently than it treats interexchange carriers **with** respect to charges for routing traffic is that Focal’s switch performs the same functions in both instances.

There is a second reason that the Commission should not grant Focal the relief it seeks in Issue 1. The geographic area and functionality tests on which Focal relies are spelled out in Paragraph 1090 of the FCC’s First Report and Order in **Implementation of the Local Competition Provisions in the Telecommunications Act of 1996**, CC Docket No. 96-98,

¶ 1034 (Aug. 8, 1996) (“First Reoort and Order”). Under paragraph 1090, however, only some calls that Focal terminates on its network may qualify for the composite tandem rate; others will qualify only for the end office rate, and not for the tandem switching or transport elements.

In paragraph 1090, the FCC stated, “[w]e find that the ‘additional costs’ incurred by a LEC when transporting and terminating a call that originated on a competing carrier’s network are likely to vary depending on whether tandem switching is involved. . . .” As the record in this proceeding shows, Focal may perform tandem switching when it terminates some traffic that originates on Ameritech Illinois’ network, but not all.

Focal would be recovering far more than its costs if it were permitted to charge the composite tandem termination rate for all local calls. Focal’s over-reaching is perhaps most apparent in its request that it be permitted to recover through reciprocal compensation what are plainly loop costs, not switching or transport costs. (Focal acknowledges, in theory, that it is not entitled to recover its loop costs via reciprocal compensation. (Tr. 150-51)).

Focal is seeking the end office, tandem, and tandem transport rates for all calls to collocated customers. But when it delivers traffic to a collocated customer, Focal merely routes the traffic from its end office switch to an intra-building OC48 transport system, which carries the traffic to the customer’s equipment a few floors away. (Tr. 146-47). Focal uses similar high-capacity digital transmission systems to connect customers in “on-net” buildings to Focal’s end office switch. (Focal. Ex. 2.1 at 14-15). While Focal claims it uses “transport” facilities to accomplish this, the facilities (and their costs) are more akin to the local loop. Staff witness Phipps agrees. (Tr. 539-40).

The record is clear that when Focal terminates a local call, it switches the call only once. Consequently, the reciprocal compensation rate that Focal proposes would significantly over-compensate Focal. Even if one assumes, arguendo, that Focal is correct when it asserts that it provides “transport” when it terminates at least some local calls, transport is a small part of Focal’s total proposed rate. (See Ex. 1.0. at 4-5, showing that Focal demands payment of both a tandem switching rate of \$0.001072 per minute and tandem transport termination and tandem transport facilities mileage of only \$0.000357 per minute). Certainly, Focal should not be permitted the much higher compensation for a switching function that it does not perform in addition to compensation for any transport function that it may sometimes provide.

Focal claims that because it has a “non-hierarchic network,” its switch somehow always functions as both a tandem and an end office switch. The contrast that Focal draws between its “non-hierarchic” network and Ameritech Illinois’ “hub and spokes” network, however, is a more useful tool for Focal’s marketing than it is for a compensation or cost analysis. The only real difference between Ameritech Illinois’ and Focal’s network architecture is that Focal’s end office switches serve larger areas and some Focal customers are therefore served by long loops. Focal’s end offices, however, are no less dependent on their connections to Ameritech Illinois’ tandem switches to provide ubiquitous connectivity to their end users than are Ameritech Illinois’ end office switches. (Panfil Verified Statement, Ameritech Illinois Ex. 2.0 at 28-29). Focal’s claim that it has a “non-hierarchic network” provides no basis for the overcompensation that Focal seeks through its demand that it be granted a tandem rate for terminating all local traffic.

Accordingly, the Commission should reject Focal's demand that it receive compensation for transport and tandem switching functions that it does not perform, and for costs that it does not incur. Rather, the Commission should adopt the contract language proposed by Ameritech Illinois, which permits Focal to receive compensation for tandem switching and transport, but only when it actually performs those functions and incurs the costs thereof.

**ISSUE 3:      CONVERSION OF SPECIAL ACCESS SERVICES TO LOOP/  
TRANSPORT UNE COMBINATIONS.**

Focal's statement of the issue to be arbitrated: Focal and Ameritech were unable to agree upon the terms and conditions under which Focal would be able to convert existing customer access circuits into a UNE combination which is sometimes referred to as Enhanced Extended Link ("EEL"), as well as the conditions under which Focal can purchase customer access circuits combined with inter-office transport, pursuant to FCC Rule 315(b). [Schedule 9.2 of the Interconnection Agreement]

The issue here is what terms and conditions should apply when Focal seeks to "convert" existing special access services that it purchases from Ameritech Illinois to an unbundled network element ("UNE") combination of a local loop and interoffice transport. Focal claims that Ameritech Illinois must make such conversions on an "unrestricted" basis. (Starkey Verified Statement, Focal Ex. 2.0 at 66). As a matter of law, Focal's position is wrong. The FCC has placed specific limitations on a CLEC's ability to request such conversions, and Ameritech Illinois' proposed contract language simply implements those limitations. Focal also asserted at the evidentiary hearing — for the first time — that Ameritech Illinois should be required to affirmatively combine loops and transport and provide to Focal a new combination of combined unbundled network elements referred to as an entranced extended link, or "EEL," pursuant to FCC Rule 315(b) (47 C.F.R. 51.315(b)).

Focal is precluded from raising that claim now because Focal never presented it in the petition for arbitration; and in any event, Focal's claim is plainly unlawful.

**A. Requisites for Converting Special Access Services to Loop/Transport UNE Combinations.**

**1. Ameritech Illinois' Definition of a "Significant Amount of Local Exchange Service" Is Supported by Federal Law and Has Been Agreed to by Focal.**

The FCC's Supplemental Order held that CLECs cannot convert special access services to loop/transport combinations unless the CLEC certifies that the combination is used to provide a "significant amount of local exchange service." Supplemental Order, ¶ 5 and n.9.<sup>3</sup> While the FCC did not define "significant," it did state that the threshold levels of traffic proposed by Bell Atlantic and others in an ex parte in the UNE remand docket would be an appropriate means of determining whether the amount of local exchange service provided by the requesting carrier was "significant." Id. at n.9. Ameritech Illinois originally proposed the thresholds from that ex parte as the standards Focal should agree to for purposes of its self-certifications. (Auinbauh Verified Statement, Am. Ill. Ex. 5 at 4-6).<sup>4</sup> Subsequently, Focal, Ameritech, and others jointly submitted a letter to the FCC again defining the thresholds for meeting the "significant amount of local exchange service" test, consistent with the earlier ex parte. (See Auinbauh Supp. Verified Statement, Am. Ill. Ex. 6 at 2 and Sch. PKF-2).

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<sup>3</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Supplemental Order (rel. Nov. 24, 1999).

<sup>4</sup> The Verified Statement and Supplemental Verified Statement of Patricia K. Fleck were adopted by Mr. Michael C. Auinbauh at the hearing. (Tr. 468-69).

Ameritech Illinois has proposed that the thresholds from that letter be included in the interconnection agreement. (Id. at 2).

Despite its agreement to those thresholds, Focal apparently has continued to take the position in this arbitration that no specific thresholds should be adopted to define a “significant amount of local exchange service” for purposes of its self-certifications. (Starkey Verified Statement, Focal Ex. 2.0 at 68-69). Focal’s position, which was baseless in the first place, is now entirely untenable. The FCC endorsed such thresholds in the Supplemental Order. Focal specifically agreed to specific thresholds in the joint letter to the FCC. (See Auinbauh Supp. Verified Statement, Am. Ill. Ex. 6 at 2 and Sch. PJK-2). Moreover, Staff witness Garvey agreed that specific minimum thresholds are appropriate and said that he considered Ameritech Illinois’ proposed thresholds acceptable. (Garvey Verified Statement, Staff Ex. 3.00 at 7-8).<sup>5</sup> Accordingly, Ameritech Illinois’ proposed thresholds should be adopted.

**2. Service Provided to ISPs is Not Local Exchange Service for Purposes of Focal’s Self-Certifications.**

As a result of Focal’s agreement to the three options for determining whether the FCC’s “significant amount of local exchange service” requirement has been met, the only remaining issue regarding Focal’s self-certifications is whether the service that Focal provides to Internet Service Providers (“ISPs”) may be characterized as “local exchange service” for

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<sup>5</sup> The use of specific thresholds also accords with common sense. If Focal could define the term “significant” however it saw fit, the requirement that it actually provide a significant amount of local exchange service over the converted loop/transport combination would be entirely meaningless. The FCC cannot have intended to create an entirely meaningless requirement.

purposes of those self-certifications. As a matter of law, the service that Focal provides to **ISPs** is not and cannot be local exchange service. The FCC has determined that the service **LECs** provide to **ISPs** is **exchange access service**,<sup>6</sup> not local exchange service. As Staffs Mr. Garvey conceded, exchange access service and local exchange service are mutually exclusive; if a particular service is exchange access service, it cannot also be local exchange service. (Tr. 74-75; Auinbauh Supp. **Verified** Statement, Am. Ill. Ex. 6 at 4, 7). Moreover, the FCC specifically stated in the Sunnlemental Order (§ 4) that it was deferring to another proceeding the question “whether **IXCs** may employ unbundled network elements solely to provide exchange access service.” Yet, if Focal could convert a special access service used to serve an ISP to a loop/transport UNE combination, it would by definition be “employ[ing] unbundled network elements **solely** to provide exchange access service,” in direct violation of the Sunnlemental Order.

Focal tries to avoid the law by claiming that the FCC has purportedly permitted the states to treat ISP **traffic** (which is distinct from the underlying service **that** such traffic uses) as local exchange traffic for purposes of reciprocal compensation, and therefore asserts that **service** to **ISPs** must be treated as local exchange service for Focal’s self-certifications. (Starkey Verified Statement, Focal Ex. 2.0 at 69). Staff falls into the same conceptual error.

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<sup>6</sup> See, e.g., In the Matter of Denlovmnt of Wireline Services Offering Advanced Telecommunications Canability, CC Dockets 98-147 et al., Order on Remand, § 35 (rel. Dec. 23, 1999) (“Advanced Services Remand Order”) (“we conclude that the service provided by the local exchange carrier to the ISP is ordinarily exchange access service”); In the Matter of GTE Telenhone Operating Cos. GTOC Tariff No. 1 GTOC Transmittal No. 1148, CC Docket 98-79, § 21 (rel. Oct. 30, 1998) (“The Commission traditionally has characterized the link from an end user to an [ISP] as an interstate access service.”) (“GTE ADSL Tariff Order”).

(Garvey Verified Statement, Staff Ex. 3.00 at 8-9). But the only case on which Focal can rely for its reciprocal compensation argument, the ISP Declaratory Ruling, was recently vacated by the D.C. Circuit. See Bell Atlantic Tel. Cos. v. FCC, No. 99-1094 (slip op., D.C. Cir. Mar. 24, 2000) (vacating and remanding the FCC's decision in Inter-Carrier Compensation for ISP-Bound Traffic, CC Dockets 96-98 and 99-68 (rel. Feb. 26, 1999)). Moreover, the flaw in Focal's theory is that the potential treatment of ISP *traffic* as local exchange traffic for purposes of reciprocal compensation is entirely distinct from (and thus irrelevant to) the issue of whether a service that, as a matter of federal law, is exchange access service, **can** be recharacterized as local exchange service for purposes of self-certification. Although the FCC has stated that ISP *traffic* might sometimes be treated as local in a specific context, that fact "does not transform the nature of traffic routed to [ISPs]," and ISPs "in fact use interstate access service." GTE ADSL Tariff Order ¶ 21. Thus, the Commission should make clear that Focal **cannot** recharacterize service to ISPs as local exchange service when making self-certifications to convert special access services to loop/transport IJNE combinations.

**3. Focal Must Pay All Applicable Termination Charges When Converting a Special Access Service to a Loop/Transport UNE Combination.**

Special access services frequently are purchased under volume or term contracts, and such contracts typically contain early-termination charges. Focal argues it should not have to pay such charges when converting special access services to loop/transport UNE combinations. (Starkey Verified Statement, Focal Ex. 2.0 at 69-70). The FCC, however, expressly held that "any substitution of unbundled network elements for special access would

require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.” UNE Remand Order, ¶ 486 n.985. Thus, as Ameritech Illinois has argued and as Staffs Mr. Garvey concludes (Staff Ex. 3.00 at 9), Focal must pay any applicable termination charges when it converts special access service to a loop/transport UNE combination.

**4. Focal Must Pay Any Applicable Service Ordering Charges When Converting a Special Access Service to a Loop/Transport UNE Combination.**

Service ordering charges are required for all UNEs, including pre-existing UNE combinations, and the same type of charges should apply when Focal orders UNEs through a special access conversion. Focal speculates that conversions involve a mere “administrative change in prices” (Starkey Verified Statement, Focal Ex. 2.0 at 70), but the record establishes that Focal’s speculation is wrong. Converting a special access service to UNEs requires Ameritech Illinois to modify its systems to recognize the loop and transport facilities as UNEs rather than as part of a bundled service. This involves “disconnecting” the pre-existing service from a records and operating system standpoint and processing “new” orders for the loop/transport UNE combination. The applicable charges in this situation would be the service ordering charge and line connection charge for the loop, and an administrative charge, a design and central office connection charge, and, in some cases, a carrier connection charge for the interoffice transport. (Auinbauh Verified Statement, Am. Ill. Ex. 5 at 9). Staffs Mr. Garvey recognizes Ameritech Illinois’ right to collect such charges. (Garvey Verified

Statement, Staff Ex. 3.00 at 10). Accordingly, the Commission should adopt Ameritech Illinois' proposed language authorizing such charges in the interconnection agreement.'

**B. Rule 315(b) Does Not Require Ameritech Illinois to Affirmatively Combine UNEs for Focal.**

At the evidentiary hearing, Focal for the first time claimed that it was not merely seeking a right to convert special access service to loop/transport UNE combinations (which right Ameritech Illinois has never denied), but also asserted that Ameritech Illinois must affirmatively combine UNEs and provide to Focal the UNE combination known as the EEL at Focal's request. (Tr. 55-56). Focal apparently bases its position on its reading of FCC Rule 315(b). Focal's position must be rejected for several reasons.

First, by failing to raise the "new EELs" issue in its arbitration petition, Focal is legally precluded from raising that issue now. Section 252(b)(2) of the 1996 Act, titled "Duty of Petitioner," clearly requires a requesting carrier to identify all issues in its arbitration petition, and the courts have held that failure to identify an issue in the petition waives it. See, e.g., GTE South. Inc. v. Morrison, 6 F.Supp.2d 517, 530 (E.D. Va. 1998), aff'd, 199 F.3d 733 (4th Cir. 1999). Focal's petition seeks permission to "convert **existing** customer access circuits into a UNE combination." (Focal Arbitration Petition at 9) (emphasis added).

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<sup>7</sup> Focal's testimony addressed two other issues that are no longer in dispute. First, while Ameritech Illinois at one time proposed that there be a cut-off date before which a special access service would have to be in place to be eligible for conversion to UNEs, it no longer proposes such a date. (Auinbauh Supp. Verified Statement, Am. Ill. Ex. 5 at 7-8). Second, Ameritech Illinois' position is that, to be eligible for conversion from special access, loop/transport combinations must terminate in collocation space. Focal originally opposed any such requirement, but the joint letter that Focal, Ameritech Illinois, and others submitted to the FCC describes when those parties agree collocation is required, which necessarily resolves the issue. (See id., Sch. PKF-2).

And Focal's witness, Mr. Starkey, spent 14 pages on this issue in his Verified Statement, yet never once mentioned the theory that Rule 3 15(b) requires Ameritech Illinois to affirmatively combine UNEs and provide EELs to Focal upon Focal's request. Because Focal failed to raise this issue at the appropriate time, the Commission cannot and need not decide it.

Second, even if Focal could raise the issue (which it cannot), its argument is wrong as a matter of law. In essence, Focal is attempting to improperly revive, through the back door, the FCC's Rule 3 15(c), which the Eighth Circuit vacated in its IUB decision, and which no court has ever reinstated. Yet that is precisely the result that Focal seeks. Focal's theory appears to be that when Rule 3 15(b) bars an incumbent LEC from separating UNEs that it "currently combines," it also means that the incumbent must affirmatively combine UNEs for a CLEC if it combines such UNEs in the ordinary course of business. In other words, Focal argues that if Ameritech Illinois ever combines two UNEs at one spot in its network, it must affirmatively combine those same UNEs for CLECs elsewhere in its network.

As the FCC's refusal to require incumbent LECs to provide unbundled EELs makes clear, Focal's theory runs directly afoul of federal law. Indeed, it is precisely because Rule 3 15(c) (which required ILECs to affirmatively combine UNEs for requesting carriers) has been vacated that the FCC, in its UNE Remand Order, squarely **refused** to require incumbent LECs to provide unbundled EELs to requesting carriers. UNE Remand Order, ¶ 478.<sup>8</sup>

Moreover, Focal's position is merely an attempt to end-run the Eighth Circuit's vacatur of FCC Rules 315(c)-(f), which, as noted above, at one time required incumbents to

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<sup>8</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (rel. Nov. 5, 1999) ("UNE Remand Order").

affirmatively combine UNEs for CLECs. The Eighth Circuit found that any such requirement violates the 1996 Act and therefore vacated those rules, which have never been reinstated.

Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), affd in part and rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999)

(“[T]he FCC’s rule requiring incumbent LECs, rather than the requesting carriers, to

recombine network elements . . . cannot be squared with the terms of subsection

251(c)(3) . . . [which] unambiguously indicates that requesting carriers will combine the

unbundled elements themselves.”). The Eighth Circuit’s decision remains the controlling

federal law ‘on this issue.’ Recognizing that fact, the Ohio Public Utilities Commission

recently rejected an identical attempt by ICG to impose a bundling requirement on Ameritech:

In regard to this issue, the Panel agrees with Ameritech. As Ameritech pointed out, the FCC declined to require the EEL as a separate network element because the issue [of requiring incumbents to combine UNEs] is still before the Eighth Circuit Court [UNE Remand Order, ¶ 478]. Also, as pointed out by Ameritech, the Eighth Circuit vacated FCC Rules 315(c)-(f), which would have required Ameritech to combine network elements for ICG. Thus, even if we were inclined to agree with ICG on this issue, we believe it would be unwise of the Panel to recommend that this Commission not follow the Eighth Circuit ruling. The Panel agrees with Ameritech that it would not best serve the public interest if the Commission were to require Ameritech to

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<sup>9</sup> Focal may cite decisions of the Ninth Circuit finding that state commissions can unilaterally re-enact Rules 315(c)-(f) or require incumbent LECs to combine UNEs. Those decisions have no impact here. First, the Eighth Circuit decided the validity of Rules 315(c)-(f) and the legality of combining requirement in its role as the Hobbs Act reviewing court under 28 U.S.C. § 2342(a), meaning it was the federal court with exclusive jurisdiction to determine the validity of that requirement. Its decision is therefore binding on all state and federal authorities and cannot be collaterally attacked. FCC v. ITT World Comms., Inc., 466 U.S. 463, 468 (1984); see Louisiana Pub. Serv. Comm’n v. FCC, 476 U.S. 355, 369 (1986) (state commission decisions that conflict with federal law are preempted). Second, while the Eighth Circuit’s holding has nationwide effect, the Ninth Circuit’s rulings apply only in that circuit (which does not include Illinois). Given that the Ninth Circuit’s decisions conflicts with the Eighth Circuit’s decision, the Commission should not import the Ninth Circuit’s errors to Illinois.

provide EELs to ICG or an[y] other NECs prior to a final determination on this issue by the Eighth Circuit and the FCC.<sup>10</sup>

In addition, the FCC has already rejected Focal's proposed expansive reading of Rule 315(b). Although Focal relies on the fact that the FCC at one time interpreted Rule 315(b) as prohibiting incumbent LECs from separating UNEs that are "ordinarily combined" (First Report and Order, ¶ 296), the FCC effectively abandoned that position in the UNE Remand Order by rejecting several CLEC requests to "reaffirm" its prior broad reading of Rule 315(b):

A number of commenters argue that we should reaffirm the Commission's decision in the ***Local Competition First Report and Order***. In that order the Commission concluded that the proper reading of "currently combines" in rule 5 1.315(b) means "ordinarily combined within their network, in the manner which they are typically combined." . . . Again, because this matter is currently pending before the Eighth Circuit, we decline to address these arguments at this time.

UNE Remand Order, ¶ 479. More importantly for the issue here, the FCC expressly declined to apply its prior broad reading of Rule 3 15(b) to loop/transport combinations:

Thus, although in this Order, we neither define the EEL as a separate unbundled network element ***nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined,'*** we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are ***currently combined and purchased through special access tariffs***.

UNE Remand Order, ¶ 480 (emphasis added). The FCC (like Focal's arbitration petition) repeatedly emphasized that the "conversion" duty is limited to ***existing*** combinations of loops and transport used for special access service. Id., ¶ 480 (***"To the extent an unbundled loop is***

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<sup>10</sup> In the Matter of ICG Telecom Groun. Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions. and Related Arrangements with Ameritech Ohio, Case No. 99-1153-TP-ARB, Arbitration Panel Report at 20, 2000 Ohio PUC LEXIS 16 (Jan. 11, 2000). The Ohio Commission affirmed the Arbitration Panel's recommendation in the Arbitration Award in that case. Id., Arbitration Award at 14 (Feb. 24, 2000).

***in fact connected to unbundled dedicated transport***, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form.”) (emphasis added); id., ¶ 486 (“under existing law, a requesting carrier is entitled to obtain ***existing combinations*** of loop and transport”) (emphasis added); id., (“to the extent those unbundled elements are ***already combined*** as a special access circuit, the incumbent may not separate them under rule 51.315(b)”) (emphasis added).

The Supreme Court concurred with this narrower reading when it reinstated Rule 315(b) (which also had been vacated by the Eighth Circuit), explaining that the rule “forbids an incumbent to separate ***already-combined*** network elements before leasing them to a competitor.” AT&T Corn. v. Iowa Utilities Board, 119 S. Ct. 721, 736-37 (1999) (emphasis added). In fact, the ***FCC itself*** told the Supreme Court that Rule 315(b) is aimed at preventing incumbent LECs from “disconnect[ing] ***previously connected*** elements.” Id. at 737 (quoting Reply Brief of the FCC, at 23) (emphasis added). These quotes are consistent with Ameritech Illinois’ reading of Rule 315(b), but not with Focal’s.

Finally, even if a state commission could require an incumbent LEC to combine UNEs to create new EELs (which it cannot), it would have to find that such a UNE combination met the unbundling test of 47 U.S.C. § 251(d)(2). There can be no such finding here because (i) the FCC addressed this issue and specifically declined to require incumbent LECs to provide new EELs (UNE Remand Order, ¶ 478), and (2) Focal has failed to provide any evidence that new EELs would meet the test of Section 251(d)(2). Thus, it is clear that the duty to provide loop/transport UNE combinations, or EELs, applies only to loop and transport facilities that are ***already*** combined to provide special access service, and the Commission

cannot impose on Ameritech Illinois a duty to affirmatively combine such UNEs for CLECs.<sup>11</sup>

Accordingly, the Commission should reject Focal's position and adopt Ameritech Illinois' proposed language on this issue.

**ISSUE 4: POINTS OF INTERCONNECTION FOR FOREIGN EXCHANGE SERVICE.**

Focal's statement of the issue to be arbitrated: Ameritech has proposed language in Section 4.3.12 of the interconnection agreement which would require Focal to maintain network facilities used to provide local service in the geographic area assigned to the central office code and would make Focal solely responsible for the transport between Ameritech's end office and the Focal point of interconnection in the case of one category of service (Virtual Office Service). [Section 4.3.12 of the Interconnection Agreement]"

The issue here is whether Focal should be able to obtain a free ride on Ameritech Illinois' transport network for Focal's foreign exchange ("FX") service, called "Virtual Office." Focal wants to be able to force Ameritech Illinois to provide interexchange transport for Focal's Virtual Office service without Focal paying for that transport. Ameritech Illinois has proposed contract language to remedy this free ride problem by requiring Focal to provide

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<sup>11</sup> Mr. Garvey proposed (at 12) that Ameritech Illinois be required to affirmatively combine and provide to Focal the UNE combination known as an EEL at Focal's request, rather than Focal having to first purchase special access service and **then** convert it. For the reasons explained above, that proposal would illegally end-run the Eighth Circuit's vacatur of Rules 315(c)-(f) by requiring Ameritech Illinois to combine **UNEs** for a CLEC. Moreover, Focal itself never raised this issue in its petition, so it is beyond the scope of this case.

<sup>12</sup> This statement of the issue is taken from Focal's arbitration petition and is no longer accurate, as Ameritech Illinois revised its proposed contract language in late January 2000. Ameritech Illinois' new proposed contract language does not require Focal to maintain network facilities used to provide local service in the geographic area assigned to each central office code where Focal wants to provide foreign exchange service. Rather, the proposed language requires Focal to merely establish a point of interconnection ("POI") within 15 miles of the rate center for any NXX code that Focal uses to provide foreign exchange service. The proposed contract language is set forth infra.

its own interexchange transport for Focal's FX service, thereby "internalizing" the costs of such transport, but Focal has refused. The Commission should adopt Ameritech Illinois' proposed contract language (§ 4.3.12), so as to prevent Focal from continuing to foist significant uncompensated transport costs onto Ameritech Illinois.

As the record shows, a foreign exchange service allows a customer to obtain an NXX code (the first three digits of a seven-digit telephone number) that is assigned to a different geographic area than where the customer is actually located. (Panfil Verified Statement, Am. Ill. Ex. 2.0 at 30-31). This enables other people in the geographic area assigned to the particular NXX code to reach the FX customer for the price of a local call, even though the call is actually transported much farther than a local call. (Id.) For example, a call from Aurora to downtown Chicago travels more than 15 miles, and thus normally would be a Band C toll call. However, if the recipient of the call in downtown Chicago is an FX customer assigned to the same NXX code as the originating caller in Aurora, the originating caller would only be billed for a local call (because Ameritech Illinois' billing systems recognize an intra-NXX call as a local call). (Id.) This is particularly attractive to companies that want customers (or employees) across a large geographic area to be able to reach them for the price of a local call.

Both Ameritech Illinois and Focal provide FX services. However, as the record establishes, the key difference between Ameritech Illinois' FX service and Focal's FX service is which carrier bears the costs of transporting a call from an originating caller to an FX customer located outside the geographic area assigned to the caller's NXX code. The following facts are uncontroverted:

- When a call is originated by an **Ameritech Illinois** local customer and terminated to an **Ameritech Illinois** FX customer, Ameritech Illinois bears the entire cost of transporting that call, Ameritech Illinois charges the originating caller for a local call and charges the FX customer a rate for FX service that includes the transport costs that Ameritech Illinois incurs to carry the call from the originating NXX area to the FX customer's location.
- By contrast, when a call is originated by an Ameritech Illinois local customer and delivered to a **Focal Virtual Office** customer, the originating customer still pays Ameritech Illinois for a local call, but, unless Focal has a point of interconnection ("POI") with Ameritech Illinois somewhere within the originating caller's local calling area, it is **Ameritech Illinois** that must bear the costs of transport (and, in some cases, switching) to carry the call from the calling party's local calling area to Focal's nearest POI outside that local calling area (e.g., from Aurora to Chicago).

(See id. at 32-33; **Aron** Verified Statement, Am. Ill. Ex. 3 at 9-10).

The record further establishes that, in the latter situation, Ameritech Illinois has no opportunity to recover its transport costs from Focal or Focal's FX customers. This regime effectively forces Ameritech Illinois to subsidize Focal's competing FX service with free interexchange transport. (**Aron** Verified Statement, Am. Ill. Ex. 3 at 14-15). In addition, because Ameritech Illinois' systems recognize the call as a local call, Ameritech Illinois bills the caller at the **fixed** rate for a local call (about 5 cents), even if Ameritech Illinois actually transports the call over a distance that would make it a toll call (which has a per-minute rate).

This is plainly uneconomic and anticompetitive. Under any rational system, Focal should bear the costs of interexchange transport for its own service. (Id. at 13-16). Indeed, unless Focal is required to pay for its own interexchange transport on FX calls, it will continue to foist significant uncompensated transport costs on Ameritech Illinois. Focal's own witness, Mr. Tatak, conceded that Ameritech Illinois' uncompensated transport costs could exceed a million dollars per month for a single carrier providing FX service. (Tr. 341).

Consider another example: assume that the average call to an FX customer lasts 25 minutes and requires 20 miles of transport to reach Focal's POI.<sup>13</sup> To determine the average mileage-related per-call transport cost, "one would then multiply 25 minutes times 20 miles times the tandem transport rate of \$0.000013 per mile (Tatak Verified Statement, Focal Ex. 3.0 at 12), which yields a per-call mileage-related transport cost of \$0.0065. Multiplying this by four million calls to Focal's FX customers in the month<sup>15</sup> yields an uncompensated mileage-related transport cost for one month of \$26,000. Based on these conservative assumptions, a single carrier, such as Focal, could force Ameritech Illinois to incur over

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<sup>13</sup> The **25-minute** assumption is reasonable because FX calls typically connect the caller to his or her employer's LAN or to the Internet, and therefore have a much longer average duration than a typical voice call. (Aron Verified Statement, Am. III, Ex. 3 at 20; Tr. 456; see Panfil Verified Statement, Am. III, Ex. 2.0 at 9) (explaining that Internet calls on average last 26 minutes, which is seven times longer than typical Band A calls)). The **20-mile** assumption is reasonable because FX calls by their very nature travel farther than a Band A call. That is the benefit of FX service — the ability of the originating caller to make a Band B or Band C call and pay only the Band A local call charge. (Aron Verified Statement, Am. III, Ex. 3 at 3; Tatak Verified Statement, Focal Ex. 3.0 at 6).

<sup>14</sup> As Mr. Aron explained, the costs that Ameritech Illinois is forced to bear when Focal provides its Virtual Office service also include duration or usage-related costs. (Aron Verified Statement, Am. III, Ex. 3 at 20). Ameritech Illinois' proposed contract language is generous to Focal, in that it does not seek to recover such usage-related costs. For purposes of illustration, our hypothetical also does not include or reflect these costs.

<sup>15</sup> The four million call figure is based on an average call duration of 25 minutes and an assumption that Focal's FX customers receive 100 million minutes of calls in the month. This is reasonable — indeed, conservative — given the emphasis Focal has placed on FX service, the success it has had in selling that service, and the overall amount of traffic it receives from Ameritech Illinois in a given month. (See Tatak Direct, Focal Ex. 3.0 at 7; Tr. 335; Tatak Cross Ex. 3). Indeed, while Focal has pointedly failed to specify what percentage of the traffic that it receives is Virtual Office traffic, an assumption that one-half of Focal's incoming traffic is Virtual Office traffic would more than triple the amount of uncompensated interexchange mileage-related transport costs that Ameritech Illinois would incur in the above example — and that Focal would avoid while freely using Ameritech Illinois' network for Focal's own service.

\$300,000 annually in mileage-related transport costs, which costs the carrier would avoid while freely using Ameritech Illinois' network to subsidize that carrier's own FX service.<sup>16</sup>

Allowing CLECs a blatant free ride of this magnitude distorts all of the parties' incentives to invest and undermines the integrity of the competitive process. (Aron Verified Statement, Am. Ill. Ex. 3 at 14-15). The fact that such uneconomic distortion currently occurs, and would continue to occur if Focal's position on the issue were adopted, is undeniable and uncontroverted on the record. To prevent this uneconomic distortion, Ameritech Illinois has proposed contract language that would require Focal to maintain a POI within 15 miles of the rating point of any NXX code that Focal uses to provide FX service:

4.3.12. If Requesting Carrier uses an NXX code to provide foreign exchange service to its Customers outside the geographic area assigned to such NXX code, Requesting Carrier shall provide a point of interconnection (POI) within 15 miles of the rating point to which the NXX code is assigned, at which Ameritech may terminate local traffic destined for that NXX code.

A POI needs to be within 15 miles of the rating point for an NXX because calls between central offices that are less than 15 miles apart are considered local, whereas calls transported over a longer distance are Band C toll calls. (Panfil Verified Statement, Am. 111. Ex. 2.0 at 36). Thus, if Focal maintains a POI within 15 miles of the rating point of any NXX it uses for FX service, Ameritech Illinois will not have to transport an FX call more than 15 miles,

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<sup>16</sup> Focal argues that Ameritech Illinois should not care about the free ride problem because its transport costs are so low that even if it had to transport calls from one edge of the LATA to another, "the cost to Ameritech would be negligible." (Tatak Verified Statement, Focal Ex. 3.0 at 12). As just demonstrated and as Mr. Tatak admitted on cross-examination (Tr. 341), that is simply wrong. Moreover, Focal admitted that it could provide transport for itself or obtain it from a third party at a cost to Focal "at least as" low as Ameritech Illinois' transport costs. (Tr. 303-04). The obvious reason why Focal has not pursued such alternatives is that it currently games the system and gets its interexchange transport on FX calls for free.

and thus will not have to provide Focal with what amounts to free interexchange transport and switching. (Aron Verified Statement, Am. Ill. Ex. 3 at 17). Ameritech Illinois also would not be forced to collect only Band A local exchange charges from its own customers for what are actually toll calls originated by those customers.<sup>17</sup>

Focal's arguments against Ameritech Illinois' proposed contract language are baseless and unsupported by the record. First, Focal contends that Ameritech Illinois should not be allowed to "dictate" where Focal puts its POIs and that requiring unnecessary POIs leads to an inefficient network architecture. (Tatak Verified Statement, Focal Ex. 3.0 at 12-15). Second, Focal sees no distinction between Ameritech Illinois transporting a call to Focal's POI that is directed to a non-FX Focal customer as opposed to a call to a Focal FX customer, and argues that if Ameritech Illinois has an obligation to provide transport to Focal's POI in the first instance (regardless of where Focal locates the POI), it has the same obligation for a call to an FX customer. (Id. at 13; see Tr. 443-44). Neither of these arguments withstands scrutiny.

Focal's claim that the proposed contract language would require it to create "unnecessary" POIs is completely unsupported. Focal already has 19 POIs with Ameritech Illinois and has plans to have well over 100 POIs soon. (Tatak Direct, Focal Ex. 3.0 at 11; Tr. 291, 296). As Focal's Mr. Tatak acknowledged, depending on its location, a single POI could easily meet the 15-mile requirement for multiple NXX rate centers. (Tr. 294-95). Indeed, as Mr. Tatak testified, given that Focal currently provides FX service in only 35

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<sup>17</sup> Ameritech Illinois still would incur uncompensated transport costs and lost call revenue for Band B calls (8-15 miles). Its proposal, however, does not seek to recover those costs, which further demonstrate that the proposal actually is generous to Focal.

different rate centers, it is possible that Focal would not need to establish any new **POIs** to immediately comply with Ameritech Illinois' proposed contract language. (Tr. 329) ("From the standpoint of. . . MSA1 or LATA 358, I cannot tell you for sure if **POIs** would be required to meet their test.")

Focal also argues that it would be inconsistent with its network grooming practices to add **POIs** near the areas where FX service is offered. (See Tr. 328-31). Once again, as Mr. Tatak conceded, there is no evidence that the placement of such **POIs** for FX service would have any effect on Focal's existing plans for adding **POIs**. (Tr. 329) ("I cannot say if it would be necessary to add those **POIs**," referring to **POIs** other than those Focal would install under its usual grooming practices). Moreover, Focal's contention is a red herring. The mere fact that Focal has been able, under its prior **interconnection** agreement, to place its **POIs** in a manner that allows it to free ride on Ameritech Illinois' transport network cannot justify a continued **free** ride under the new interconnection agreement. As the record establishes, any speculative inconvenience to Focal in adding **POIs** for FX service pales in comparison to the significant uncompensated transport costs Focal is already shifting to Ameritech Illinois.

In addition, Focal's claim that Ameritech Illinois is trying to "dictate" the number or location of Focal's **POIs** (Tatak Verified Statement, Focal Ex. 3 at 12-15) is baseless. Under Ameritech Illinois' proposed contract language, where Focal chooses to put its **POIs** is still determined by Focal, not by Ameritech Illinois, and depends on where Focal chooses to offer FX service. Ameritech Illinois' proposed language merely ensures that wherever Focal offers FX service, it has arranged to provide its own interexchange transport for calls traveling more

than 15 miles from the originating rate center. Further, while Focal alleges that (but does not identify where) the FCC has purportedly found that a CLEC may establish a single POI per LATA (id. at 12), that assertion is inapposite to the issue at hand. The FCC has never found — nor could it find — that a CLEC can use a single POI to provide foreign exchange service throughout a LATA by taking a free ride on the incumbent LEC's transport network.

Focal's second line of argument is that Ameritech Illinois purportedly is obligated to transport all calls to Focal's nearest POI, regardless of whether it is an FX or non-FX call. (Id. at 13-15). This too is a red herring. In essence, Focal is arguing that because the free ride problem could exist for both FX and non-FX service, the Commission is somehow precluded from accepting Ameritech Illinois' proposal, because that proposal is limited to FX service. That argument is obviously illogical. Neither the Commission nor Ameritech Illinois has any obligation to fix the whole problem at once. Ameritech Illinois has focused on FX service because it creates the most significant free ride problem. This is because (1) FX calls typically travel a much greater distance than local exchange calls, which increases mileage-related transport costs (Aron Verified Statement, Am. Ill. Ex. 3 at 20); and (2) Focal typically would place its POIs close to its actual local exchange (non-FX service) customers, but would not necessarily place POIs near customers who might call Focal's FX customers. (Tr. 448, 453).

Finally, Focal itself acknowledges that establishing POIs is not onerous. First, Focal already has 19 POIs and intends to vastly increase that number. (Tr. 291). Second, Focal admits that all it needs to do to establish a POI is negotiate with one of several carriers that can lease the necessary transport to Focal. (Tr. 334). Mr. Tatak further acknowledged that

several carriers compete to provide such transport to other carriers (Tr. 339), which gives Focal bargaining power in securing a good price. Hence, there are no reasonable barriers to Focal's complying with Ameritech Illinois' proposed language, except Focal's desire to maintain the free ride it currently obtains from Ameritech Illinois.

In sum, the record establishes that Focal's current provision of FX service unfairly allows it to take a free ride on Ameritech Illinois' interexchange transport network, and that Ameritech Illinois' proposed contract language is a reasonable — indeed, generous vis-a-vis Focal — means of addressing and correcting the problem. Nothing in federal or state law requires Ameritech Illinois to provide Focal with such a free ride, and basic economic principles, as well as principles of fair and efficient competition, mandate that such a free ride should not be perpetuated. (Aron Verified Statement, Am. 111. Ex. 3 at 16-19, 21). Accordingly, the Commission should adopt Ameritech Illinois' proposed Section 4.3.12.

**ISSUE 7: MODIFICATIONS TO COMPONENTS OF xDSL LOOPS.**

Focal's statement of the issue to be arbitrated: The parties were unable to agree on whether Ameritech is able to change any components of an already-provisioned xDSL loop without Focal's consent. [Section 9.5.6 of the Interconnection Agreement]

As the record establishes, Ameritech Illinois changes network elements or their components as part of its ongoing efforts to maintain its network facilities so that end users of all the carriers that use those facilities continue to receive quality service. For example, Ameritech Illinois' maintenance technicians modify loop components as necessary to repair damaged cable or other facilities; in some cases, a technician might reassign an end user from a defective loop to a spare, undamaged loop in the same group. (Auinbauh Verified Statement, Am. Ill. Ex. 5 at 12). Focal initially proposed language for the interconnection

agreement that would have prevented Ameritech Illinois from changing loops, or any other component of an already provisioned xDSL loop being leased by Focal, without first obtaining Focal's consent. Focal recently changed its proposed language to require Ameritech Illinois to provide "reasonable notice" before Ameritech Illinois makes any "service-affecting modification or changes to facilities" that establish a network element.

Both proposals are improper and impractical. First, Ameritech Illinois maintains ownership of the network elements that it leases to Focal, and is responsible for maintaining them. It would be unfair for Ameritech Illinois to retain that responsibility while, at the same time, restricting Ameritech Illinois' right and ability to perform any network-related maintenance or improvements by requiring consent from and/or prior notice to CLECs such as Focal. Focal does not have a right to veto or to demand prior notice of changes to Ameritech Illinois' network elements, and giving Focal such a right would prevent Ameritech Illinois from properly managing and maintaining its network. (Auinbauh Verified Statement, Am. 111. Ex. 5 at 12).

Second, obtaining Focal's consent (or giving Focal notice) would require enormous and costly changes to Ameritech Illinois' procedures. Under current procedures, when Ameritech Illinois' maintenance personnel repair a loop, they do not know the identity of the carrier using that loop, nor is that information readily available. In order to obtain Focal's consent for (or give Focal notice of) repair work, Ameritech Illinois would have to set up a procedure for its technicians in the field to call in before beginning any work, then have a team of researchers available to **figure** out whether a loop is being used by another carrier (and if so, which carrier), then have a team of intermediaries on hand to locate the appropriate

carrier representative and request, obtain, and document the carrier's consent (or give notice, as the case may be). All the while, repair technicians would be out in the field, waiting for answers, instead of performing the work that benefits end users and their carriers alike. (Id. at 12-13).

Third, Ameritech Illinois' existing practices and procedures relating to network maintenance, repair and improvements ensure nondiscriminatory treatment, while both of Focal's proposals would create the possibility of discrimination or at least claims of discrimination. Currently, Ameritech Illinois' field personnel are "blind" to the identity of the carrier using the facilities that the field personnel are working on. Under the current system, Ameritech Illinois' field personnel necessarily treat all carriers, including Ameritech Illinois, alike. In contrast, under either of Focal's proposals, Ameritech Illinois' field personnel would learn the identity of the carrier using each loop that such personnel are working on, and would become susceptible to accusations of discrimination, (Id. at 13). All of the above facts are undisputed.

Significantly, Staff has agreed with Ameritech Illinois' position on Issue 7. In particular, Staff witness Graves recommends that Ameritech Illinois merely identify the conditioned DSL loops being leased by Focal (and other carriers) with separate colored markers. (Graves Verified Statement, Staff Ex. 3.00 at 9). As the record establishes, however, Ameritech Illinois is already labeling xDSL loops as Mr Graves recommends. In Ameritech Illinois' central offices, DSL loops already have special markings that identify them as DSL loops to technicians. The DSL markers are bright yellow with the term "DSL" in bright red lettering. (Miri Verified Statement, Am. Ill. Ex. 7 at 3). The markers identify

the DSL circuits as high voltage circuits and also “flag” the circuits as something more than a dial tone circuit. (Id. at 3-4). It is important to note that, because Ameritech Illinois currently tags all DSL loops in the same manner, Ameritech Illinois’ technicians have no way of distinguishing Ameritech Illinois’ DSL loops from those of other carriers; hence, discrimination is not possible. (Id. at 4). In short, because Ameritech Illinois is already providing what Staff recommends, there is nothing for the Commission to order and Focal’s proposal with respect to Issue 7 should be rejected.

### CONCLUSION

For the reasons set forth above, and as further elaborated and supported in this proceeding, Ameritech Illinois respectfully urges the Commission to rule in its favor on Issues 1, 3, 4, and 7.

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Respectfully submitted,

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